

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5988 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAKSHIT N MAZUMADAR

Versus

GENERAL MANAGER- DENA BANK

Appearance:

MR NR SHAHANI for Petitioner

MR AC GANDHI for Respondent No. 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/11/97

ORAL JUDGEMENT

#. The petitioner, an officer of the Dena Bank has filed this Special Civil Application and challenge has been made to the order of the Deputy General Manager, Personnel of the Bank dated 23.2.85, under which he was ordered to be dismissed from services and the order of the appellate authority dated 20th September 1985, confirming the said order in appeal filed by the

petitioner.

#. The learned counsel for the petitioner raised four contentions challenging the validity, legality and correctness of the aforesaid two orders which are as under:

(i) The petitioner has submitted written submissions before the enquiry officer but the enquiry officer has mentioned in the enquiry report that the petitioner has not submitted any written submissions. So the written submissions of the petitioner were not taken into consideration and only on this ground both the orders vitiate.

(ii) Because of the alleged act or omission of petitioner, the Bank has not suffered any loss and as such, the petitioner should not have been given any penalty.

(iii) The petitioner has prayed for giving him personal hearing but the appellate authority has not given the same to the petitioner and as such on this ground, the order of the appellate authority vitiates.

(iv) Exceeding of powers by petitioner to permit the customers for withdrawal against clearance of Cheque is only an act of lack of correct decision or error or mistake but it cannot be said to be a case of lack of integrity or negligence.

#. On the other hand, the learned counsel for respondents contended that the Bank has suffered heavy loss because of the exercise of powers beyond his competence by the petitioner of extending the facility of withdrawal of amount against clearance. It is not the case of simple lack of decision or inaction or omission or error or wrong decision. It is a case where the petitioner has given undue benefits to the customers which has ultimately resulted detrimental to the Bank. This misconduct of the petitioner has also been reported to CBI and the CBI has already filed Challan against him which is pending in the Criminal Court. It has next been contended that in fact, the petitioner had colluded with some customers of the Bank in extending the undue benefit and it is a case of lack of integrity. It has next been contended that Dena Bank Officer Employees' (Discipline & Appeal) Regulations, 1976, nowhere provide any right of hearing to the delinquent officer before the appellate authority in appeal filed by him against the order of

disciplinary authority. Replying the contention of learned counsel for the petitioner that the petitioner submitted written submissions before the enquiry officer but the enquiry officer has recorded that no such written submissions have been submitted, the learned counsel for respondents contended that written submissions were received late. It is contended that the enquiry report is a detailed one and the enquiry officer has considered each and every evidence produced by parties and then has reached to conclusion on the charges. The petitioner has failed to show how any prejudice has been caused to the petitioner by non-consideration of written submissions alleged to have been submitted by him to the enquiry officer. Carrying this contention further, the learned counsel for respondents contended that Disciplinary Rules nowhere contemplate that written submissions have to be taken by the enquiry officer. Replying to the last contention, the learned counsel for respondents contended that the exceeding of powers by the officer of the Bank in advancing loan limits etc. is a serious misconduct and it cannot be said to be a case of mere omission or error or mistake. In support of this contention the learned counsel for respondents placed reliance on decision of Hon'ble Supreme Court in the case of Disciplinary Authority-cum-Regional Manager & Ors. v. Nikunja Bihari Patnaik, reported in (1996) 9 SCC 69.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Re.: Contention that the appellate authority has not given opportunity of personal hearing to the petitioner. Regulation 7 of the Dena Bank Officer Employees' (Conduct) Regulations 1976 nowhere provide that the appellate authority while considering the appeal filed by delinquent officer against the order of disciplinary authority imposing any of the penalties specified in Regulation 4 has to offer any opportunity of personal hearing. Only in case where the appellate authority decides to enhance the punishment in a matter where the enquiry has already been held as provided in Regulation 6, it is obligatory for it to give a show cause notice to the delinquent officer as to why the enhanced penalty should not be imposed upon him and shall pass the final order after taking into account representation, if any, submitted by the delinquent officer. Even in that case, the provision of personal hearing is not there. So this contention of learned counsel for the petitioner is devoid of any substance. Otherwise also, the learned counsel for the petitioner is unable to make out how any prejudice has been caused to the delinquent officer for

non giving of opportunity of hearing to him by the appellate authority. I have gone through the judgment of the appellate authority and I find therefrom that all the points raised by petitioner in the memo of appeal have been given due consideration and the appellate authority has passed a reasoned order.

#. Re.: Contention that written submissions of petitioner were not considered by the enquiry officer. The copy of the memo of appeal filed by petitioner against the order of his dismissal from services has been filed on record of this Special Civil Application at annexure 'G'. After going through the contents of the memo of appeal, I find that the petitioner has not made this grievance before the appellate authority. The petitioner has supplemented the memo of appeal vide annexure 'H' and even in the supplemented memo of appeal he has not raised this ground. When the petitioner has not raised this ground before the appellate authority it clearly goes to show that he was agreeable on this point or he had no grievance in the matter. This point has been taken for the first time by petitioner before this Court in the writ petition and only on this ground this contention cannot be allowed to be raised by the petitioner. The petitioner had a right of appeal against the order of disciplinary authority dismissing him from services and whatever grounds which he thought of having any merit should have been raised in appeal and in case any ground has not been raised it will be presumed that the petitioner has not considered it worth to raise that particular ground. The petitioner, in the disciplinary proceedings cannot be allowed to make a new case before this Court under Article 226 of the Constitution of India. The validity, legality and propriety of the order of the disciplinary authority or the appellate authority has to be considered with reference to the grounds raised by petitioner in appeal and not with reference to the grounds which have been raised now for the first time before this Court. Otherwise also, the learned counsel for the petitioner is unable to show how any prejudice has been caused to the petitioner by non consideration of written submissions made by petitioner before the enquiry officer. The enquiry report is on record of this Special Civil Application and the enquiry officer has, after considering all the evidence produced by both the parties on record, recorded findings on the charges.

#. Re.: Contention that the Bank has not suffered any loss. This contention, in view of the decision of the Apex Court in the case of Disciplinary Authority-cum-Regional

Manager & Ors. v. Nikunja Bihari Patnaik (supra), is of no substance. Their Lordships, Supreme Court, in this case, held that proof of any loss is not necessary in the matter where an officer of the Bank has been chargesheeted for misconduct of "acting beyond one's authority". Otherwise also, from the affidavit which has been filed by the Bank before this Court dated 14th October 1997, it is clearly borne out that the Bank has suffered loss because of the act of the petitioner. The customers to whom the petitioner extended the benefit of withdrawal against clearance have not paid the amount and the Bank has to file civil suit. That civil suit has been compromised by the Bank and against the total claim of Rs.39.86 lacs, Rs.25 lacs have been agreed to be paid by the customer as full and final settlement and as such the Bank has suffered the loss of about Rs.14.86 lacs. The learned counsel for respondents further contended that the loss is much more than what it is reflected from the affidavit as the interest on the amount due has been calculated at the rate of 10% p.a., i.e. simple interest. So it is not correct to say on the part of learned counsel for petitioner that the Bank has not suffered any loss because of petitioner exercising his powers beyond his authority in the present case. The learned counsel for the petitioner admitted that the petitioner has exceeded the powers of his limit. He has not taken prior sanction of higher authorities. However, what the learned counsel for the petitioner contended that the customer was an esteemed customer of the bank and earlier the officers of the Bank in the said branch were also extending the benefit of withdrawal of amount against clearance and it was in fact a practice followed in his case. The petitioner was posted temporarily in the branch concerned and as such he adopted the same practice. The petitioner was temporarily posted in the branch concerned and as per the case presented by his counsel, he was also a new person transferred to Bhopal. If that is the position, then he should have been more cautious and careful. He was only temporarily posted there and as such he should not have exceeded his powers of limit. The very fact that he exceeded his powers at a branch where he was only temporarily posted may be a fact which goes against him though the learned counsel for the petitioner heavily submitted that this goes in his favour. Otherwise also, in view of the decision aforesaid of the Hon'ble Supreme Court wherein it has been held that "acting beyond ones authority is misconduct" the petitioner's case cannot be taken to be a case of error or omission or mistake. It is clear case where the petitioner has committed misconduct which has resulted in loss to the bank and both the authorities

have not committed any error in passing the impugned orders. It is admitted as earlier taken by petitioner that he exceeded his powers.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)